

# EXHIBIT 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

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TETRIS HOLDING, LLC, and THE

TETRIS COMPANY, LLC,

Plaintiffs and,

Counterclaim Defendant Civil Action No.

-against-

3:09-CV-6115

(FLW) (DEA)

XIO INTERACTIVE,

Defendant and

Counterclaim Plaintiff.

-----x

August 11, 2011

11:23 a.m.

Videotaped Deposition of JEFFREY C. NEU,  
taken by Plaintiff, pursuant to subpoena, at the  
offices of Kirkland & Ellis, LLP, 601 Lexington  
Avenue, New York, New York, before SUZANNE  
PASTOR, a Shorthand Reporter and Notary Public  
within and for the State of New York.

A P P E A R A N C E S:

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ALSO PRESENT:

MICHAEL DAVIDSON, Videographer

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2           A.       Correct. Same clients, just  
3 brought on a new partner.

4           Q.       This is Exhibit 10.

5                   (Neu Exhibit 10 for identification,  
6 Bates NEU 21 through 25.)

7           Q.       Exhibit 10 is a document that was  
8 produced by you, Jeff. Just to explain, you  
9 didn't produce documents with a Bates number so  
10 we numbered each page of the documents that you  
11 produced. That's why at the bottom it says  
12 "endorsed by TTC" and then it has a control  
13 number at the bottom. Do you see that?

14          A.       Yes.

15          Q.       So this document was produced by  
16 you. We've labeled it Neu 21 through 26. And  
17 it's an e-mail chain between you and Maura  
18 Carter and Desiree Golen from November of 2008,  
19 is that correct?

20          A.       It appears so.

21          Q.       So if you look at the first e-mail  
22 in the chain which appears on page Neu 24 --

23          A.       Mm-hmm.

24          Q.       -- it appears to be an e-mail to  
25 you from Maura Carter. The date is cut off on

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2       this document, but I'll tell you that it was on  
3       November 6th of 2008.

4           A.       Okay.

5           Q.       Now, is this the first contact that  
6       you had with anyone at XIO Interactive?

7           A.       I don't recall.

8           Q.       Would you have any reason to  
9       believe this wasn't the first communication you  
10      had?

11          A.       I don't, no. Other than the fact  
12      that apparently they mistyped their own company  
13      name in the e-mail.

14          Q.       In Maura Carter's e-mail to you she  
15      says that she was -- they were referred to you  
16      by Eva Galpern, who was a referral specialist at  
17      the Electronics Frontier Foundation. Correct?

18          A.       That's what it says.

19          Q.       Are you on a referral list for the  
20      EFF? And I'll refer to Electronic Frontier  
21      Foundation as EFF.

22          A.       I work with the EFF on a variety of  
23      matters. I don't know that they maintain a  
24      specific referral list. Not that I'm aware of.  
25      However, at some point in time Eva Galpern was

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2 easily foresee a reason where if you had vector  
3 graphics versus static graphics, that the source  
4 code in how those graphics are produced may be  
5 indicative of whether it's infringing or not. I  
6 can recall several video games where the  
7 graphics were produced in a random manner, which  
8 the graphics were therefore determined to be  
9 noninfringing because they were not necessarily  
10 controlled as to their production by the way the  
11 source code was written --

12 Q. Okay, but you didn't need to see  
13 the source code in connection with your  
14 representation of XIO, correct?

15 A. Not at this time.

16 Q. Did you ever see the source code  
17 for XIO's application?

18 A. I did not.

19 Q. And finally, in the very first  
20 e-mail in this chain, or the last e-mail in this  
21 chain which appears at the top of the page,  
22 Desiree Golen attaches two screen shots of  
23 TetraNet, which was the name of their  
24 application at the time, correct?

25 A. It appears so.